



Working with the Office of Government Information Services: An Agency Guide

The OPEN Government Act of 2007 amended the Freedom of Information Act (FOIA) by establishing the Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA) to review agency FOIA compliance and to resolve FOIA disputes. Public Law 110-175 also assigned responsibility to agency FOIA Public Liaisons (FPLs) to help resolve disputes.

Congress, which has referred to OGIS as the “FOIA Ombudsman,” directs OGIS to:

- review agency FOIA policies and procedures;
- review agency FOIA compliance;
- recommend FOIA policy changes to Congress and the President;
- offer mediation services to resolve disputes between FOIA requesters and agencies as an alternative to litigation; and
- issue advisory opinions, at its discretion, if mediation fails to resolve a dispute.

OGIS sees these mandates falling into two basic areas and has created a two-prong mission:

- (1) **review** of policies, procedures and compliance, and
- (2) **mediation services**

Mediation Services

OGIS offers **mediation services** which is an umbrella term that encompasses **formal mediation**, where an agreed-upon outside mediator assists in resolving a dispute; **facilitation**, an informal process in which OGIS staff facilitates communication among and between the parties to resolve a dispute; and **ombuds services**, which includes providing information and handling general complaints and observations. All mediation services are in accordance with the Administrative Dispute Resolution Act of 1996, 5 USC §§ 571-84, including its confidentiality provision.

Both FOIA requesters and agencies may contact OGIS to help resolve a dispute at any point in the FOIA process. OGIS does not “take sides” in disputes or advocate on behalf of a requester or agency; the office promotes a fair FOIA process and works with parties to reach a mutually agreeable resolution.

When OGIS contacts an agency to obtain the status of a request or an appeal, we are not acting as a proxy for the requester. Rather, we are fulfilling our statutory mission and the requester is exercising his or her statutory right to seek OGIS assistance. Likewise, when working with OGIS to assist a requester, agencies are complying with FOIA’s legal requirements.

Whenever practical, OGIS encourages the requester to exhaust his/her remedies within the agency before opening a case. OGIS encourages requesters to first work with the FPLs within the agencies to resolve disputes.

When a customer contacts OGIS to resolve a dispute, the process is generally as follows:

1. Opening a case:

- Customer describes the dispute, the assistance requested and provides any relevant correspondence
- OGIS assigns a case number which is provided to the customer
- OGIS asks for a signed consent from customers who are FOIA requesters that allows OGIS to discuss the requests with the appropriate agencies without violating the Privacy Act
- An OGIS staff member is assigned the case and works to resolve the dispute
- General information about the case (excluding any personally identifying information) is provided publicly in the OGIS Case Log available at <http://www.archives.gov/ogis>

2. Factfinding:

- OGIS reviews the information provided, typically including a description of the dispute and copies of relevant correspondence, and contacts the customer for clarification if necessary
- OGIS contacts the agency FPL to describe the dispute and may be directed to FOIA professionals within the agency to further discuss the issue and gather facts; OGIS will continue to communicate with the designated agency professional; OGIS staff may need to conduct independent research or consult with the Office of Information Policy at the Department of Justice, the government's FOIA policy office
- OGIS determines whether mediation or facilitation is appropriate to resolve the dispute

3. Resolving the dispute:

a. Facilitation

- OGIS communicates any information one party approves to share with the other, including potential solutions either party may suggest
- OGIS may suggest options for resolution
- For facilitation to succeed, the parties must agree to the resolution of the dispute

b. Mediation

- Each party must agree to participate in formal mediation
- OGIS will arrange mediation through a neutral third party who has been agreed upon by all parties to the dispute; this person may be a Federal employee or a private mediator who is trained in mediation
- Any costs associated with the mediation will be covered by OGIS
- For mediation to succeed, the parties must agree to the resolution of the dispute

c. Ombuds services

- OGIS answers queries about the FOIA process and provides general FOIA assistance
- OGIS logs and addresses observations, complaints and suggestions on FOIA issues

4. Closing the case:

- If the parties agree that the facilitation or mediation has resolved the dispute, OGIS will close the case and note accordingly in the file and the OGIS Case Log, and may follow up to confirm that any agreed-upon action is taken
- If both parties cannot agree whether facilitation or mediation resolved the dispute, or agree that the dispute is not resolved, OGIS will close the case and note it was not resolved

5. Advisory opinions:

- OGIS may issue an advisory opinion at its discretion, regarding any issue over which OGIS has jurisdiction, if mediation has failed to resolve a dispute, including when either party declines to participate in mediation

Review

In addition to providing mediation services to resolve disputes, OGIS engages in **review** of agencies' FOIA policies, procedures and compliance. In so doing, the office may:

1. conduct a detailed analysis of agencies' FOIA Annual Reports and Chief FOIA Officer reports to identify strengths and weaknesses in agencies' FOIA policies and procedures;
2. gather relevant data through OGIS's role in resolving FOIA disputes;
3. work collaboratively with agencies in conducting a review of FOIA policies and practices, including reviewing the agency's FOIA regulations; and
4. conduct studies, surveys and other research related to agencies' FOIA practices as necessary in the preparation of the Office's reports to Congress and the President

OGIS will make recommendations to Congress and the President for improving FOIA based on the information it has gathered. OGIS will work collaboratively with the Department of Justice's Office of Information Policy to:

1. improve FOIA compliance and develop best practices and policies in FOIA administration;
2. coordinate, support and participate in training and informational programs to promote best practices in the FOIA process among agencies and requesters; and
3. promote openness and transparency in government

To learn more about OGIS, visit <http://www.archives.gov/ogis> or contact the office at:

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